

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 6765 OF 2007

Paresh Sureshchandra Shah & anr.... Petitioner
versus
Velji Hirji Patel Respondent.

Mrs. Ranjana Parikh with Mr. Sameer Bhalekar for
petitioner
Mr. V.A. Gangal for Respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 28TH SEPTEMBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioners are original plaintiff who instituted a suit against the respondents for ejectment and possession after terminating the tenancy in regard to an open plot of land by serving a notice under section 106 of the Transfer of Properties Act.

3. By Indenture of Lease the petitioners put the respondent in possession of the open plot of land and as the lease was for a period of ten years, after expiry of the term of lease, admittedly the respondent

continued as monthly tenant. The petitioners by issuing the notice, terminated the lease and thereafter instituted regular Civil Suit No. 47/03 on 4-11-2003. The suit was instituted in the Civil Court, treating the same as a suit for possession under Transfer of Property Act. It may not be out of place to mention that prior to the coming into force of Maharashtra Rent Control Act 1999 with effect from 31-3-2000, the suit property viz. open plot of land was regulated by the provisions contained in the Bombay Rent Act. By the Maharashtra Rent Control Act, the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 came to be repealed and the present suit has been filed much after the repeal of the Bombay Rent Act. It is an admitted position that open plot of lands were also regulated by the Bombay Rent Act. Whereas having regard to the definition of premises comprised in section 7(9) the open plot of lands are not covered. The trial court having regard to the pleadings, framed issues. Additional issues nos. 5 and 6 reads thus:

5) Whether the defendant proves that the Rent Act is applicable to the present suit property? and

6) Whether the plaintiffs prove that

*Transfer of Property Act is applicable to
the present suit ?*

The issues came to be decided by the trial court by holding that an open plot of land, which is the subject matter of the suit, is not governed by the Rent Act and it is governed by Transfer of Property Act, thus in turn, holding that the suit as filed is very much maintainable before the Civil Court. The order passed by the trial court was challenged by filing a Revision purportedly under section 34(4) of the Maharashtra Rent Control Act 1999, and the Addl. District Judge allowing the revision no.2/06 has held that the open plot of land is governed by the Rent Act and thus the suit filed before the civil court would not be maintainable and the same ought to have been filed before the court under the Rent Act. The Revisional Court has categorically held that as open plot of land was regulated by Bombay Rent Act, when the same was in force, the open plot of land would continue to be governed by the Maharashtra Rent Control Act. It is this order passed by the District Judge, which is challenged by filing the instant writ petition.

4. The learned counsel for the petitioner has raised two contentions:

1) That as the suit has been filed after the repeal of the Bombay Rent Act, by the Maharashtra Rent Control Act 1999 the open plot of land is not regulated by the Rent Act as open plot of land has been excluded from the definition of 'premises' under the Maharashtra Rent Control Act 1999, and

2) That the revision filed before the District Judge purportedly under section 34(4) of the Maharashtra Rent Control Act 1999 is wholly misconceived and the District Judge had no jurisdiction to entertain and decide the revision. It is submitted that the respondent could have filed revision under section 115 of the CPC or in the absence of the revisional remedy being available the respondent could have filed the writ petition.

5. It is undisputed that open plot of land is not covered by the definition of 'premises' under section 7(g) of the Maharashtra Rent Control Act. Section 2 deals with applicability of the Act. Sub section (1) lays down that the Act shall in the first instance apply to premises let out for the purposes of residence, education, business, trade or storage in the areas specified in Schedule I and Schedule II. Sub section (2) then provides that notwithstanding anything contained in sub section (1), it shall also

apply to the premises or, as the case may be, houses let out in the areas to which the Bombay Rent Act applied, before the date of commencement of the Act. The submission of the learned counsel for the respondent is that the term "premises" which find place in sub section (2) of section 2 of the Rent Act would be referable to the premises which were earlier governed by Bombay Rent Act. To put it in otherwords it is contended that the definition of 'premises' appearing in the Bombay Rent Act need to be read where a reference to premises or 'such premises' is made in sub section (2). Per contra the learned counsel for the petitioner submits that while interpreting the word 'premises' appearing in Maharashtra Rent Control Act, the same has to be ascribed the meaning having regard to the definition given in the Maharashtra Rent Control Act. Thus the submission is that the 'premises' or 'such premises' referred to in sub section (2) need to be construed as defined in section 7(g) of the Act. As the definition of 'premises' exclude open plot of land, the same cannot be regulated by the provisions of the Maharashtra Rent Control Act. The question raised is no longer re-intergra and the same has been decided by a learned Single Judge of this Court by a judgment in **Maharaji Wd/o Bajrangi Vishwakarma & ors Vs. Sayeedabi W/o Haji Sayyad Gani** reported in 2006(2) ALL MR 133.

While holding that as open plot of land is not regulated by the provisions of Maharashtra Rent Control Act, tenants of open plot will not have any protection of Maharashtra Rent Control Act, when the suit is filed after commencement of the said Act. The learned Single Judge interpreted section 2(2) thus:

Para"10. Had the Legislature intended that section 2(2) was meant to continue to bring open sites within the sweep of Maharashtra Act in spite of restrictive definition of premises in section 7(9) of the Maharashtra Act, the Legislature would not have referred to description of areas. In that case, the Legislature would have simply said that notwithstanding anything contained in sub section (1), the Act shall also apply to all premises and houses to which the erstwhile rent laws applied on the date of commencement of the Act. Such a clause would have taken in its sweep not only change in description of areas but also overridden the change brought about by clause (9) of Section 7.

11. The Legislature could have even added a rider in clause (9) of section 7 itself by

saying that "premises" shall also include any leasehold to which the provisions of erstwhile rent laws applied; provided that such premises continue to be let on the date of commencement of the Act.

12. Therefore, the phraseology used in drafting clause (2) of section 2: the placement of this clause in section 2 to override clause (1) of the said section; and conscious exclusion of open spaces in definition of "premises" in clause (9) of section 7 all rule out the interpretation sought to be put by the learned counsel.

13. In view of this, it would have to be held that the appellants do not have any protection under the Maharashtra Rent Control Act, 1999 and, therefore, their eviction ordered by the two Courts below cannot be assailed."

7. The learned counsel for the petitioner has submitted that rent enactments are in the nature of legislation creating procedural embargo on the landlord's right to evict the tenants and upon withdrawal of such embargo, the landlord's right which was under the clog of procedural embargo, would be

freed, and the crucial time or the cut of point would be the date of coming into force of Maharashtra Rent Control Act 1999. All suits filed after 31-3-2000 seeking possession of the open plot of land based on termination of tenancy by issuing a notice under section 106 of the Transfer of Property Act, need to be tried by Civil Courts.

8. Reliance is placed on yet another judgment in case of **Gangdas S/o Moujibhai Patel Vs. Harshvardhan s/o Balkrushna Bhadupotey & ors. reported in 2003(2) ALL MR 127.** After noticing the relevant provisions of the Maharashtra Rent Control Act, the learned Single Judge has held that the provisions of the C.P. and Berar Rent Control Order or Bombay Rent Act (which are repealed) would be applicable and would apply to the suit or proceedings pending on the date of commencement of the Act and the suits filed after commencement of the Maharashtra Rent Control Act would be regulated by provisions of the Transfer of Property Act.

9. Section 46 of the Act deals with pending suits and proceedings on the date of commencement of the Maharashtra Rent Control Act. Whereas section 58 deals with the repeal and savings. By sub section (1) of Bombay Rent Act, C.P. and Berar Rent Control Order

and Hyderabad Houses (Rent, Eviction and Lease) Control Act 1954 are repealed. Sub section 2 of section 58 which begins with a non obsteti clause provide thus:

a) All applications, suits and other proceedings under the said Acts, pending on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority, shall be continued and disposed of, in accordance with the provisions of the acts so repealed, as if the said acts had continued in force and this act had not been passed.

b) The provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder:

c) Any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under

this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification made or issued under this Act:

d) All prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law.

10. Conjoint reading of section 46 and section 58 of the Maharashtra Rent Control Act leaves no room of doubt that only pending suits or proceedings on the date of the commencement of the Maharashtra Rent Control Act would continue to be regulated by the provisions of the repealed enactment and as a necessary corollary thereof it has to be held that suit filed after commencement of the Maharashtra Rent Control Act, in relation to the premises viz, open plot of land would be regulated by the provisions of Transfer of Property Act. The learned single Judge has thus rightly concluded that open plots of land, for possession of which suit has been instituted after coming into force of the Maharashtra Rent Control Act would not be regulated by the provisions of the said Act, as open plot has not been included in the definition of premises. I am in agreement with the

view taken by the learned Single Judges in the two judgments referred to hereinabove. Thus i have no hesitation in holding that the District Judge has committed an error in holding that open plot of land would be regulated by provisions of Maharashtra Rent Control Act. The District Judge has misread both the judgments referred to hereinabove and reached a wrong conclusion. Hence I answer point no.1 in favour of the petitioners.

11. The next contention advanced by the learned counsel for the petitioner, about absence of jurisdiction with the District Judge in entertaining revision preferred before him by the respondent purportedly under section 34(4) of the Maharashtra Rent Control Act, is also well merited. Section 34(1) provides for appeals and sub section (4) provides for revisional remedy when no appeal lies. The appeal or revisional remedy provided under section 34 is against a decree or an order passed by the courts exercising jurisdiction under the Maharashtra Rent Control Act. In the present case, the Civil Judge Junior Division was not exercising jurisdiction under the Maharashtra Rent Control Act but was exercising jurisdiction as a court of Ordinary Civil jurisdiction. As the jurisdiction exercised by the Civil Judge Junior Division in the instant case was referable to section

9 of CPC, the order passed by the said court could have been assailed by filing a revision under section 115 of the CPC and not before the District Judge in porported exercise of jurisdiction under section 34 (4) of the Maharashtra Rent Control Act. Thus the impugned order passed by the District Judge allowing the revision filed by the respondent/defendants is without jurisdiction. The impugned order suffers from a patent illegality warranting interference in exercise of writ jurisdiction. The District Judge by the impugned order has directed return of plaint to the plaintiff for its presentation to proper court. The said direction is wholly unsustainable in law.

12. In the result the writ petition is allowed. Impugned order passed by the District Judge no.1, Palghar dated 4-8-2007 in Civil Revision Application NO.2/06 is quashed and set aside. The trial court is directed to proceed with the trial and decision of the regular civil suit No.47/03 in accordance with the law. Rule made absolute in above terms with no order as to costs. The trial court shall proceed with the trial after eight weeks from today.